

---

## OLR Bill Analysis

sHB 5218 (as amended by House "A")\*

### ***AN ACT CONCERNING THE ADOPTION OF THE UNIFORM PARTITION OF HEIRS' PROPERTY ACT.***

#### **SUMMARY:**

This bill creates procedures governing certain actions to partition real property that is owned by multiple parties as tenants in common, a form of ownership where more than one person owns the property and each has an interest that does not terminate on his or her death and can be passed on to his or her heirs.

A partition action happens when a party (cotenant) seeks to physically divide the property into separate parcels. Under the bill, when a cotenant files an action to partition property, the court must (1) determine if the property is heirs' property based on the bill's criteria and determine its fair market value and (2) follow the bill's procedures for partitioning it instead of those in current law. Those procedures allow cotenants to buy all of the interests of cotenants seeking to sell the property in the partition action. If all of those interests are purchased, the court reallocates interest in the property.

If no cotenant elects to buy the interests, the court must partition the property by (1) selling it (partition by sale) or (2) physically dividing it into separate parcels (partition in kind), depending on the circumstances the bill specifies. If at least one cotenant elects to buy, but after following the bill's procedures some of the interests remain unpurchased, the court must order partition by sale or in kind.

The bill's provisions apply to actions filed on or after October 1, 2014.

\*House Amendment "A" makes a technical and conforming change.

EFFECTIVE DATE: October 1, 2014

## **§ 2 — HEIRS' PROPERTY**

The bill's partition procedures apply to heirs' property, which the bill defines as real property held in tenancy in common under certain circumstances. Property falls under this definition when, on the date a partition action is filed:

1. there is no agreement in a record binding all cotenants that governs partition;
2. at least one cotenant acquired title from a living or deceased relative; and
3. at least 20% of the (a) interests are held by cotenants who are relatives, (b) interests are held by an individual who acquired title from a living or deceased relative, or (c) cotenants are relatives.

The bill defines "relatives" to include those in an individual's direct line of lineage (such as a person's parents and children); others considered relatives under intestate succession law (such as uncles and cousins); and individuals otherwise related by blood, marriage, adoption, or state law.

## **§ 3 — WHEN THE BILL'S PROVISIONS APPLY TO A PARTITION ACTION**

If a party brings a partition action in probate or Superior court under existing law (see BACKGROUND), the bill requires the court to determine if the property is heirs' property. If it is, the court and the parties must follow the bill's provisions instead of existing law. The bill applies unless all cotenants agree in a record otherwise.

The bill provides that it supplements existing law. But when the bill applies to a partition action, its provisions replace any inconsistent provisions of existing law.

## **§ 4 — SERVICE AND NOTICE**

The bill does not affect the method of serving a complaint in a partition action. But, if the plaintiff seeks an order of notice by

publication and the court determines the property may be heirs' property, the bill requires the plaintiff to post a conspicuous sign on the property. The plaintiff must post the sign within 10 days of the court's determination and keep it posted during the action. The sign must state:

1. that the action began,
2. the court's name and address, and
3. how the property is commonly known.

The court may also require posting the plaintiff's and any known defendant's name.

## **§ 5 — APPOINTING A COMMITTEE**

Existing law allows the court to appoint a committee to assist it in an action to partition property. If it does so, the bill requires committee members to be disinterested and impartial and prohibits parties or other participants in the action from being committee members.

## **§ 6 — DETERMINING FAIR MARKET VALUE**

### ***Options to Determine Value***

After the court determines that property is heirs' property, the bill requires it to determine the property's fair market value by using any value or method all cotenants agreed to or, if they do not agree on one, ordering an appraisal. If it orders an appraisal, the court must appoint a disinterested Connecticut-licensed real estate appraiser to determine the value.

If the cost of an appraisal outweighs its evidentiary value, the court can hold a hearing to determine the property's value and notify the parties of the value.

### ***Appraised Value***

If the court orders an appraisal, the bill requires the appraiser to determine the value assuming a single owner owns the property outright (in fee simple). The appraiser must file a sworn or verified

appraisal with the court. The court notifies, within 10 days of receiving the appraisal, all parties with known addresses:

1. of the appraised fair market value,
2. that the appraisal is in the clerk's office, and
3. that a party has 30 days after the notice is sent to state any grounds for objecting to the appraisal.

Whether or not a party objects, the court must hold a hearing to determine fair market value, but not until at least 30 days after sending the notice. The court may consider the appraisal and any other valuable evidence a party offers at the hearing. The court must then send notice of the fair market value to the parties.

#### **§ 7 — OPTION TO PURCHASE INTERESTS AFTER APPRAISAL**

The bill allows a cotenant to request partition by sale, which is a court-ordered sale of the entire property by auction, sealed bids, or open-market sale. After such a request, the court must send a notice that any of the other cotenants can buy the interests of the cotenants requesting the sale. A cotenant has 45 days after notice is sent to notify the court that he or she wants to buy these interests. The purchase price of each interest is determined using the fair market value as multiplied by a cotenant's fractional ownership of the property.

If no cotenant elects to buy all of the interests, the bill requires the court to notify the parties and order either partition in kind or partition by sale (see § 8 below). If at least one cotenant elects to buy, the court must follow the procedures described below to determine whether all of the interests will be purchased.

#### ***Cotenants Electing to Buy***

The bill requires the court to notify the parties if a cotenant elects to buy the interests of all cotenants requesting partition by sale. If more than one cotenant elects to do so, the court must allocate their right to buy interests according to a formula. The following example illustrates how the court would apply the formula. If four cotenants each own

25% of the property and one seeks to sell, the other three cotenants may seek to purchase that interest. The three seeking to purchase would each be able to purchase one-third of the interest that is for sale. The bill requires the court's notice to state the price each cotenant will pay.

The court must set a deadline, which is no sooner than 60 days after sending notice, for these cotenants to pay their apportioned price to the court. The bill applies the following rules after the deadline.

1. If all the electing cotenants pay the appropriate amounts, the court reallocates the cotenants' interests and disburses the money to those entitled to it.
2. If no electing cotenant pays, the court proceeds as if the interests of the cotenants requesting partition by sale were not purchased. This means the court will order either partition in kind or partition by sale (see § 8 below).
3. If at least one electing cotenant fails to pay, the court, on motion, must notify all those that did pay for interests that interests remain outstanding. The court must provide the purchase price for the remaining interests and give the cotenants 20 days to purchase the remaining interests. The court then follows the procedures described below.

### ***Purchasing Additional Interests***

When electing cotenants have the option to purchase additional interests as described in #3 above, the bill applies the following rules.

1. If one cotenant pays for all remaining interests, the court reallocates the interests to that cotenant, promptly orders reallocation of all of the interests, and disburses the amounts paid to those entitled to it.
2. If no cotenant pays for all of the remaining interests, the court must proceed as if the interests of the cotenants requesting partition by sale were not purchased. This means the court will

order either partition in kind or partition by sale (see § 8 below).

3. If more than one cotenant pays the entire price for the remaining interests, the court must reapportion the remaining interests among these cotenants according to a formula. The following example illustrates how the court would apply the formula. If two cotenants seek to purchase the remaining interest and one originally owned 10% of the property and the other 20% of the property, the former would be able to purchase one-third of the outstanding interest and the latter two-thirds. The court must promptly reallocate interests, disburse money paid, and refund any excess payments.

### ***Non-Appearing Defendants***

The bill allows a cotenant who is entitled to buy an interest to ask the court to authorize the sale of the interests of cotenants who (1) were named as defendants, (2) were served the complaint initiating the action, and (3) did not appear. The cotenant must make this request within 45 days of the court sending its initial notice of the partition by sale. The court can deny or authorize such a sale on fair and reasonable terms after holding a hearing. But the sale of these interests cannot occur until after all other interests have been purchased and reallocated as described above and their purchase price must be based on fair market value.

## **§§ 8-9 — PARTITION IN KIND OR PARTITION BY SALE**

### ***Court Determination***

The bill requires the court to order partition in kind (dividing the property physically into separately titled parcels) if it makes certain findings. If the court does not order it, the court must order partition by sale (see § 10) or dismiss the action if no cotenant requests partition by sale.

### ***Court Findings Requiring Partition in Kind***

The bill requires the court to order partition in kind if:

1. all interests of cotenants that requested partition by sale are not

purchased under the provisions described above or a cotenant remains who requested partition in kind and

2. it will not result in manifest prejudice to the cotenants as a group.

When considering whether to order partition in kind, the bill requires the court to approve requests to combine individual interests.

To determine whether partition in kind causes manifest prejudice, the court must consider:

1. whether the property can be divided practicably;
2. whether partition apportions the property in a way that the aggregate fair market value of the parcels is materially less than the value of the property as a whole under a court-ordered sale;
3. the duration of ownership or possession by a cotenant and his or her predecessors who were relatives of the cotenant or each other;
4. a cotenant's sentimental attachment to the property including its ancestral, unique, or special value to a cotenant;
5. lawful uses of the property by a cotenant and the harm to a cotenant who can no longer use the property in that way;
6. the degree that cotenants contributed their share of property taxes, insurance, and other ownership expenses or contributed to the property's physical improvement, maintenance, or upkeep; and
7. other relevant factors.

The bill provides that no one factor is dispositive and the court must weigh the totality of relevant factors and circumstances.

### ***Ordering Partition in Kind***

When ordering partition in kind, the bill:

1. allows the court to require some cotenants to pay other cotenants so that payments combined with the value of in-kind distributions make the partition just and proportionate in value to the fractional interests the cotenants held and
2. requires the court to allocate part of the property to cotenants who are unknown, cannot be located, or are the subject of a default judgment (this must represent their combined interest and the court does not divide up this portion of the property).

### **§§ 10-11 — OPEN-MARKET SALE**

If the court orders a sale, the bill requires an open-market sale unless it finds a sale by sealed bids or auction is more economically advantageous and in the best interests of the cotenants as a group.

The bill allows the parties, within 10 days of the court's order of an open-market sale, to choose a Connecticut-licensed real estate broker to offer the property for sale. The court must appoint a broker chosen by the parties and set a reasonable commission. If the parties do not agree on a broker, the court must appoint a disinterested broker and set his or her commission.

The broker must offer the property for sale in a commercially reasonable manner for at least the fair market value and under any terms and conditions set by the court.

If the broker obtains an offer for at least the determined value within a reasonable time, the broker must file a report with the court within seven days of receiving the offer and can complete the sale. The report must (1) describe the property to be sold to each buyer, (2) name each buyer and the purchase price, (3) state the sale's terms and conditions including any owner financing terms, (5) state any amounts to be paid to lienholders, (6) describe contractual and other arrangements or conditions of the broker's commission, and (7) provide other relevant material facts.

If the broker does not obtain such an offer, the court can hold a hearing and (1) approve the highest of any outstanding offers, (2)



redetermine the property's value and continue to have the property offered for sale, or (3) order the property sold by sealed bids or auction.

The court must set the conditions of any sale by sealed bids or auction and an auction follows the existing law regarding partitions. (Existing law regarding partitions does not explicitly address auctions, although a court ordering the sale of property in a partition could presumably order a sale by auction.)

If the purchaser is someone who is entitled to a share of the proceeds, he or she receives a credit against the purchase price for that amount.

## **§§ 12-13 — OTHER PROVISIONS**

In applying and construing the bill's provisions, the bill requires consideration of the need to promote uniformity with respect to its subject matter among states that have enacted the uniform provisions.

The bill provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act. But it does not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures (such as when consumers are considered to have consented to electronic disclosures) or (2) authorize electronic delivery of specified notices that are not subject to E-SIGN.

## **BACKGROUND**

### ***Probate Court Partitions (CGS § 45a-326)***

During the settlement of an estate of a deceased person who owned an interest in property that he or she did not specifically address in a will or other binding document, the law allows the estate executor or administrator or another owner of the major portion of the other interests in the property to apply to the probate court for partition.

Unless a partition petition is signed by all those with interests in the property, the probate court must provide notice and hold a hearing. The probate court can order partition only if it is in the best interests of the estate and parties. If the court believes that selling the property

better promotes the owners' interests or the property cannot be beneficially divided to distribute it, the court can order a sale. Unless all the parties signed the petition, the court cannot order the sale until providing notice and a hearing and finding that the sale is in the estate's and parties' best interests.

The probate court can appoint a committee of three disinterested people to partition the property. A portion of the property given to the deceased person's estate is treated as if it had been partitioned during his or her lifetime. A trustee must hold the share for any party entitled to it whose name and residence is unknown.

***Other Partition or Sale Action (CGS § 52-495 et seq.)***

The law allows a court to order property partitioned on complaint of an interested person. The court can appoint a committee to partition the property.

When a deceased tenant in common (and others with certain ownership interests) devises his or her interest in the property with a contingent interest (a future transfer of the interest that may or may not occur), a person may file a complaint with the court to partition the property between those with interests.

On complaint of an interested party, a court can order the sale of property owned by two or more people if it will better promote the interest of the owners. If one or more of the owners have only a minimal interest in the property and a sale would not promote the interest of the owners, the court can order an equitable distribution, with just compensation to the owners with minimal interests, as will better promote the owners' interests.

The court can appoint a committee to make a sale. The court must make reasonable orders to protect any share that is owed to a party whose name or residence is not known.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/28/2014)